

COUNTY OF DELAWARE  
PENNSYLVANIA

ORDINANCE NO. 2020-8

AN ORDINANCE OF THE COUNTY OF DELAWARE, COMMONWEALTH OF  
PENNSYLVANIA PROVIDING FOR A CIVIL PENALTY FOR A MINOR PUBLIC  
HEALTH VIOLATION IN DELAWARE COUNTY.

WHEREAS, the arrest, charging and prosecution of individuals possessing small amounts of marijuana represent a substantial cost to taxpayers as well as to law enforcement, prison, and court resources; and

WHEREAS, a civil penalty provides a practical tool and commonsense approach to controlling the use of marijuana and promotes greater efficiency in Delaware County's criminal justice system; and

WHEREAS, local police will remain able to charge individuals under the state criminal statutes when the circumstances warrant such an arrest;

IT IS HEREBY ENACTED AND ORDAINED by the County Council of Delaware County, Pennsylvania as follows:

**Section 1.** The title of Chapter 173 of the Delaware County Code is hereby amended to read, "SMOKING AND MINOR PUBLIC HEALTH VIOLATIONS."

**Section 2.** Chapter 173 of the Delaware County Code is hereby amended by the addition of Article II to read as set forth below:

ARTICLE II  
Minor Public Health Violations

**§ 173-5. Preamble.**

So long as marijuana shall be listed as a controlled substance in "The Controlled Substance, Drug Device and Cosmetic Act," 1972, April 14, P. L. 233, No. 64, Section 1 et seq., 35 P.S. 780-101 et seq., no person shall (i) purchase or attempt to purchase, (ii) be in possession of or (iii) smoke in any public space a small amount of marijuana or possess marijuana paraphernalia in the County of Delaware, Commonwealth of Pennsylvania, all as set forth in this Article.

**§ 173-6. Offense Defined.**

The following shall be a civil violation of this Ordinance:

1. Purchasing or attempting to purchase a small amount of marijuana;
2. Possessing a small amount of marijuana or marijuana paraphernalia; or
3. Smoking a small amount of marijuana in any public space;

provided, however, that this Ordinance shall not apply to any of these violations to the extent that they take place within or on the grounds of any public library or any public, private or parochial elementary or secondary school.

**§ 173-7. Definitions.**

1. "Marijuana" or "marihuana" means all forms and/or varieties of the genus Cannabis, whether growing or not, as defined by the "Controlled Substance, Drug, Device and Cosmetic Act," 1972, April 14, P. L. 233, No. 64, Section 1 et. seq., 35 P. S. 780-101 et. seq.

"Marijuana paraphernalia" means anything used for packing, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

"Public space" means any street, alley, highway, traffic way, park, sidewalk or a vehicle in or upon any of the referenced areas, or any other place to which the public is invited.

"Small amount of Marijuana" means 30 grams or less of marijuana

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such delivery device which contains marijuana.

"Minor" means any individual under the age of 18 years at the time of violation of this Ordinance.

**§ 173-8. Violations.**

Persons found in violation of this Ordinance shall be issued a Notice of Violation by the police or other authorized law enforcement officer. Alternatively, the officer can obtain the subject's name and address and later send a Notice of Violation by First Class Mail. Such Notice of Violation shall be in the standard form provided for non-traffic citations, unless a local municipality passes an ordinance pursuant to Section 173-11.3, in which case, it may use its own Notice of Violation in substantially the same form (except for payment provisions).

**§ 173-9. Violations by Minors.**

The officer who identifies a violation of this Ordinance by a minor shall:

1. Temporarily detain the minor and follow the existing procedures for the handling of summary offenses committed by a minor;
2. Advise the parent or guardian that the minor was found in possession of or smoking in a public space a small amount of marijuana; and
3. Issue a Notice of Violation to the minor.

**§ 173-10. Penalty.**

The penalty for a violation of this Ordinance by an adult or minor shall be a civil fine of \$50.00 for each violation. In its discretion, upon application by the person cited, a magisterial district court may suspend the fine imposed if the person cited agrees to admission to an adjudication alternative program or other in place pre-adjudication disposition.

**§ 173-11. Enforcement.**

1. It is the intent of Council that municipal police may exercise their lawful authority to enforce this ordinance when a violation occurs in the officer's presence within the territorial boundaries of their municipality within the County of Delaware.
2. A Notice of Violation issued under this ordinance shall be enforced consistent with the procedures established in Chapter 4 of the Pennsylvania Rules of Criminal

Procedure (Pa.R.Crim.P.), Procedures in Summary Cases, Parts A and B, Pa.R.Crim.P. 401-414.

3. The provisions of this ordinance shall not apply in any local municipality within the County of Delaware which has an ordinance similarly prohibiting the possession of a small amount of marijuana within said municipality and imposing penalties for violation of said ordinance.

4. This Ordinance shall not be construed to supersede any existing Pennsylvania or Federal law. Municipal police officers in Delaware County retain the authority to enforce the applicable statutory laws. It is the intent of Council that police officers may: (A) conduct any lawful search when there is probable cause to believe that a criminal offense has been or is being committed; and (B) make a custodial arrest when there is probable cause to believe a criminal offense other than one of the violations described in Section 173-6.

5. Any revenue collected by this Ordinance should be used for funding new or existing drug and alcohol abuse treatment and prevention programs.

**Section 3.** This Ordinance shall take effect on the tenth day after its adoption.

ENACTED AND ORDAINED by County Council of the County of Delaware, Pennsylvania, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Brian P. Zidek, Chair

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Dr. Monica Taylor, Vice Chair

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Kevin M. Madden

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Elaine Paul Schaefer

\_\_\_\_\_  
Christine A. Reuther

Attested:

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Anne M. Coogan, County Clerk